

*L. Lesowitz*



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Minact, Inc.  
**File:** B-237128.2  
**Date:** November 9, 1989

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### DIGEST

1. Prior dismissal of a protest is affirmed where the protester failed to file its protest against the award of a contract within 10 working days of the date the bases of protest were known or should have been known.
2. Protest against the decision to reopen discussions and to request new best and final offers (BAFOs) limited to cost submissions is untimely when filed after the closing date for the submission of the new BAFO.

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### DECISION

Minact, Inc., requests reconsideration of our dismissal of its protest under request for proposals (RFP) No. JC-RX-89-FRP1, issued by the Department of Labor for the continued operation of a job corps center in Oregon. We dismissed the protest because Minact failed to file its protest within 10 working days of the date the basis of protest was known or should have been known.

We affirm our dismissal.

Two offerors, Minact and General Electric Government Services (GE), submitted timely proposals which were in the competitive range. Following discussions, both offerors submitted best and final offers (BAFOs) by June 30, the closing date for receipt of BAFOs. The agency subsequently notified the offerors that it was reopening discussions because both offerors had exceeded the government cost model. With respect to Minact, the agency listed the 10 line items in Minact's proposal which exceeded the government's estimate. Although the agency was satisfied with the offerors' technical proposals, it afforded both offerors an opportunity to submit a second BAFO, limited to revised cost estimates. Minact revised its cost estimate and

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submitted a second BAFO by July 21, the closing date for receipt of the second BAFOs.

By notice dated August 31, and received by Minact on September 7, the agency informed Minact that award had been made to GE at a price which was higher than Minact's price. The agency stated that while Minact's proposal was technically sound, GE's was superior. On September 11, Minact attended a debriefing session. By letter dated September 18 and received by our Office on September 26, as evidenced by our Office's time/date stamp, Minact filed a protest challenging the award of the contract to GE at a higher price than Minact had proposed. Minact also objected to the composition of the evaluation panel and the cost evaluation. Alternatively, Minact challenged the agency's decision to reopen discussions and request a new BAFO. On September 27, we dismissed Minact's protest because it was not filed with our Office within 10 working days of the date the basis of protest was known or should have been known, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1989).

Minact now argues that it did not fully learn of the basis for protest until September 11, when it received a debriefing by the agency, and had 10 working days from that date to file its protest with our Office. However, Minact learned from the agency on September 7 both that award had been made to GE and the basis for the award. This obviously provided Minact with its basis for protesting the award at a higher price than it offered and therefore it had 10 working days from that date to protest that issue. Minact's protest was filed on September 26, the 13th working day after it knew of the basis for protest.

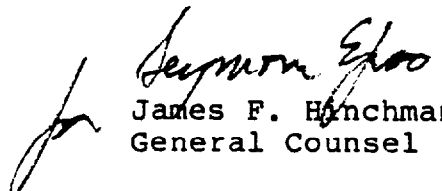
Further, regarding the composition of the evaluation panel and the evaluation of costs, matters Minact argues it learned at the debriefing, even considering September 11, the date of the debriefing, as the date that Minact knew of the basis for these protest issues, its protest was still untimely, as September 26 was the 11th working day after that date.

Minact's other protest issues, challenging the agency's decision to reopen discussions and request a new BAFO limited to the submission of revised cost estimates, also were untimely raised. An objection to a request for a BAFO is viewed as a solicitation impropriety which must be protested no later than the next closing date for receipt of BAFOs. 4 C.F.R. § 21.2(a)(1); S.T. Research Corp.--Reconsideration, B-235478.2, June 23, 1989, 89-1 CPD ¶ 597. Here, July 21 was the closing date for receipt of the second

BAFOs, but, again, Minact did not protest this until September 26.

Minact requests that we consider its protest pursuant to the exception in our timeliness rules for a protest that raises a significant issue. 4 C.F.R. § 21.2(b). The significant issue exception is strictly construed and sparingly used to prevent the timeliness rules from being rendered meaningless. We will invoke it only if consideration of the protest "would be in the interest of the procurement system." Hunter Envtl. Servs., Inc., B-232359, Sept. 15, 1988, 88-2 CPD ¶ 251. In the typical case, we make this determination by looking at whether the subject of the protest concerns a matter of widespread interest to the procurement community or involves a matter that has not been considered on the merits in a prior decision. See, e.g., Christoph's Research and Design Sys., Inc., B-232966, Dec. 12, 1988, 88-2 CPD ¶ 585. Minact's protest does not meet this standard. Therefore, we will not consider Minact's protest under the significant issue exception to our timeliness rules.

Accordingly, our prior dismissal is affirmed.



James F. Hinchman  
General Counsel